



Monroe County Historic Preservation Commission Rules and Procedures

The Monroe County Historic Preservation Commission, in Section 135-3(g)(1), Monroe County Land Development Code, is granted the authority to adopt such rules of procedure necessary for the administration of its responsibilities to govern the Historic Preservation Commission's hearings and proceedings.

1. Conduct of Meetings.

- A. The Planning and Environmental Resources Department (inclusive of its professional designee(s)) is instructed not to place any application, item, or proposal on the Historic Preservation Commission's agenda, unless and until in the professional judgment of the professional staff of the Department, all the documentation required by the Monroe County Codes and Monroe County Comprehensive Plan is/are included in the application, that the application is generally in compliance with the technical requirements of the Monroe County Codes and Monroe County Comprehensive Plan, and that the application provides all the information reasonably needed by the Commission to render its decision. The applicant may either revise the application in accordance with the recommendations of the Department's professional staff or may request, in writing, that the application be submitted to the Historic Preservation Commission at the next regularly scheduled meeting that will meet the advertisement requirements.
- B. Any information or records (including but not limited to drawings, photos, maps, and documents), or legal memoranda, from the applicant and/or participants must be received by the Planning and Environmental Resources Department no later than ten (10) calendar days before the Historic Preservation Commission meeting date at which the application is scheduled to be considered by the Historic Preservation Commission. If any such information or records, or legal memoranda, from the applicant and/or participant is received on the tenth calendar day prior to said meeting date, it must be received by the Department no later than 12:00 P.M. noon to be considered by the Historic Preservation Commission. It shall constitute legally inadequate notice to the Department's professional staff, to counsel for the County, or to the Historic Preservation Commission, for Department professional staff, for County counsel, or for the Historic Preservation Commission, to adequately understand, evaluate, or respond to such information or records, or to such legal memoranda, if any are submitted in non-compliance with this Rule of Procedure.
- C. A majority vote of the Historic Preservation Commission is required to allow the information, petitions, or records, or memoranda, as referenced in the foregoing Rule of Procedure, which is submitted in non-compliance with said Rule's ten (10) calendar day submission requirement, into the record.
- D. In presentation by speakers at the public hearing, the Historic Preservation Commission expressly reserves the right to limit presentations that are not materially relevant to the application under review, or that are clearly repetitive of points previously made.
- E. The Chairperson or presiding member of the Historic Preservation Commission may limit presentations to three minutes per individual speaker, or to five minutes to those natural persons representing an organization (non-profit or for-profit) or legal person.
 - (1) The first person representing such organization or legal person shall be allowed the five minutes. Subsequently, all other speakers on behalf of such organization or legal person shall have no more than three minutes to address the Historic Preservation Commission.
 - (2) The Historic Preservation Commission may request proof of authority to speak on behalf of an organization or on behalf of a legal person, and may request proof of the legal existence of an organization or of the legal existence of a legal person.
- F. In accordance with Rule Regulating the Florida Bar 4-3.9 (Florida Rule of Professional Conduct 4-3.9), as amended, a lawyer representing a client before the Historic Preservation Commission when it is acting as a legislative body or when the Historic Preservation Commission is acting in a non-adjudicative and/or non-quasi-adjudicative proceeding, is required to disclose that the appearance is in a representative capacity, and that lawyer shall conform to Rules

Regulating the Florida Bar 4-3.3(a) through 4-3.3(d) and 4-3.4(a) through 4-3.4(c), as amended (Florida Rules of Professional Conduct 4-3.3(a) through 4-3.3(d), and 4-3.4(a) through 4-3.4(c), as amended).

- G. In quasi-judicial proceedings and in quasi-legislative proceedings, any applicant, agent of the applicant, or member of the public purporting to offer expert testimony shall identify any educational, occupational, and other ostensible expertise that they possess which is relevant to their qualifications to speak as an expert regarding the matter under consideration. Any Historic Preservation Commission Commissioner, or counsel, may inquire further as to such expertise.

2. **Burdens of Proof and Standards of Review.**

- A. The applicant has the initial burden of proof to show that its application conforms to and satisfies the requirements of the Monroe County Codes, the Monroe County Comprehensive Plan, and relevant Florida general law.

3. **Testimony and Written Comments.**

- A. The presence and ability to cross-examine the author of an affidavit or similar sworn or attested statement is required for its admissibility into the record of the Historic Preservation Commission, unless for good cause shown (such as, for example, the death of the affiant); this requirement may be waived and/or forfeited by a failure to object to the admission of such affidavit or similar sworn or attested statement.
- B. Applicants, agents for applicants, and members of the public may submit timely written comments to the Planning and Environmental Resources Department for consideration by the Historic Preservation Commission. Properly and timely submitted written comments may be considered as part of the record as provided elsewhere in these Rules of Procedure and in conformity with the Monroe County Codes and Comprehensive Plan.

4. **Quasi-judicial proceedings.**

- A. All quasi-judicial proceedings shall be in conformity with Florida general law.
- B. All quasi-judicial proceedings shall be in accordance with Division 7, Article III, Chapter 2, Monroe County Code of Ordinances.
- C. All discussions between Historic Preservation Commission members and applicants, their agents, or their counsel, or members of the general public, regarding a quasi-judicial matter to be considered or decided by the Historic Preservation Commission, shall take place at public hearings and be part of the public record. Ex parte communications with the applicant, his, her, or its agent(s), and/or his, her, or its counsel, and/or with members of the general public, regarding a quasi-judicial matter to be considered or decided by the Historic Preservation Commission member, should not occur. However, if any such ex parte communication occurs or any information is communicated ex parte by such person or party to a Historic Preservation Commission member regarding any quasi-judicial matter to be considered or decided by the Historic Preservation Commission, the Historic Preservation Commission member must disclose that ex parte communication and the information communicated ex parte prior to any consideration, discussion, or decision of that item.
- D. For quasi-judicial hearings involving development applications (including but not limited to requests for special certificates of appropriateness, etc.), the following will be the order of presentation, unless varied at the meeting by the Historic Preservation Commission:
 - (1) Monroe County Planning and Environmental Resources Department professional staff will first present their professional staff report(s) and/or presentation(s);
 - (2) The hearing will be opened for the applicant to speak;
 - (3) The hearing will then be opened for public comment(s);
 - (4) After this, Department professional staff may present any clarifying information to the Historic Preservation Commission;
 - (5) The Historic Preservation Commission Commissioners will then deliberate the matter, and the Historic Preservation Commission shall thereafter conduct its vote;
 - (6) At any time during the hearing, the Historic Preservation Commission Commissioners may ask Department professional staff questions, and may ask questions of the applicant or of public speakers.
- E. The failure to file a timely, proper, and sufficiently specific objection, or to present a timely and sufficiently specific legal argument or ground for relief, or to timely raise a sufficiently specific materially relevant legal issue, shall be considered an irrevocable jurisdictional waiver and failure to preserve such objection, argument or ground for relief, or legal issue, and/or irrevocable jurisdictional forfeiture of the opportunity to file such objection or to present such

legal argument, ground for relief, or legal issue, and failure to preserve such objection, argument or ground for relief, or legal issue.

- F. Failure to properly file a timely motion for rehearing with the Historic Preservation Commission through the Monroe County Planning and Environmental Resources Department, in the Historic Preservation Commission's capacity as the lower tribunal in administrative and/or judicial appeals, proceedings, or actions, bringing to the Historic Preservation Commission's attention any and all putative insufficiencies in the findings of fact, summaries, clear statements, or conclusions of law entered in its written decision by exhaustively identifying any and all such putative insufficiencies and requesting entry of a more complete order fully addressing such insufficiencies, is and shall be deemed a binding waiver of such issue(s) and irremediable failure to preserve error on such ground(s) in any appeal, proceeding, or action, that seeks administrative or judicial relief from said written decision.
- G. Formal rules of evidence shall not apply, but basic due process¹ shall be observed and shall govern quasi-judicial proceedings before the Historic Preservation Commission. Discovery (including, but not limited to, depositions, requests for production, requests for admission, and interrogatories) is not permitted or authorized in Historic Preservation Commission proceedings.

5. Meeting Decorum.

A. Scope of Discussion and Comments.

- (1) During each item before the Historic Preservation Commission, all comments, remarks, statements, and arguments shall be exclusively be made at the lectern, to the Historic Preservation Commission as a whole, clearly into the microphone, and, if televised, visible to the T.V. audience. No comments, remarks, statements, or arguments may be made away from a location directly in front of a microphone. The purpose of this requirement is to ensure that all comments, remarks, statements, or arguments may be entered into the minutes and/or the record.
- (2) No applicant, counsel for an applicant, or member of the public may direct questions to individual members of the Historic Preservation Commission.
- (3) No applicant, counsel for an applicant, or member of the public may direct questions to a presenter, although public comment from such persons may result in a Historic Preservation Commission member asking a question to a presentation presenter to clarify a matter.
- (4) No applicant, counsel for an applicant, or member of the public may direct questions to Monroe County professional staff, although public comment from such persons may result in a member of the Historic Preservation Commission asking a question to County professional staff to clarify a matter, although a party (or, if represented, counsel for that party's counsel) may direct questions to County professional staff during authorized cross-examination in an appropriate, duly noticed quasi-judicial proceeding.
- (5) No applicant, counsel for an applicant, or member of the public may direct questions concerning materially relevant elements of a claim or appeal to a Historic Preservation Commission member, to County professional staff, or to counsel for the County, although public comment from such persons may result in the Historic Preservation Commission asking such a question to County professional staff, or to counsel for the County.
- (6) No applicant, counsel for an applicant, or member of the public may direct questions to counsel for the County.
- (7) No member of the public may direct questions to an applicant, although public comment from such persons may result in the Historic Preservation Commission asking a question to an applicant to clarify a matter.
- (8) No member of the public may direct questions to counsel for an applicant.
- (9) No applicant, counsel for an applicant, or member of the public may direct questions to the audience, or to members of the public.
- (10) Each speaker shall clearly state his or her name for the record, and, if applicable, the organization or legal person represented, if any.
- (11) Each speaker's remarks must be directed to the Historic Preservation Commission as a whole and shall not be to individual Historic Preservation Commission members, shall not be to the applicant, shall not be to counsel for the applicant, shall not be to County professional staff, shall not be to counsel for the County, and shall not be to the audience or gallery or members of the general public.
- (12) Each speaker shall confine his or her comments exclusively to the proposition before the Historic Preservation Commission he or she has requested to speak on.

¹ "Basic due process" shall be construed as synonymous with the term "fundamental due process."

- (13) Speakers may not address, or persist in addressing, immaterial and/or irrelevant topics.
- (14) Speakers may not use any form of profanity or abusive comments.
- (15) Conduct or acts in violation of a scope of discussion and comment Rule of Procedure approved herein shall not be considered by the Historic Preservation Commission in making its final decision on the matter before it.

B. Prohibited Conduct.

- (1) Speakers may not refuse to yield the lectern and/or podium when the Historic Preservation Commission Chairperson or presiding member of the Historic Preservation Commission has stated that his or her speaking time is up.
- (2) One speaker, whether a natural or a legal person, may not donate or transfer his, her, or its speaking time to another speaker.
- (3) The Historic Preservation Commission Chairperson or presiding member of the Historic Preservation Commission may notify and warn a speaker that his or her comments have exceeded the scope of the subject matter of the proposition which he or she had signed up to address.
- (4) Shouting or yelling at the Monroe County Historic Preservation Commission, at Monroe County Planning and Environmental Resources Department professional staff, or at counsel for the County, is strictly prohibited at all times. All such behavior automatically constitutes disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (5) Abusive comments and/or personal attacks shall be considered immaterial and irrelevant to the hearing or proceeding and shall constitute a breach of the privileges to address or offer comments, remarks, arguments, statements, or presentations to the Historic Preservation Commission, and shall not be tolerated. All such behavior automatically constitutes disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (6) All persons and entities are prohibited from being unduly repetitious or presenting matters not materially relevant to the item under consideration. Such behavior automatically constitutes disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (7) No shouting, clapping, applauding, cheering, singing, heckling, booing, or verbal outbursts in support of or in opposition to a speaker's remarks, are permitted. All such behavior shall be considered discourteous and disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (8) No shouting, clapping, applauding, cheering, singing, heckling, booing, or verbal outbursts in support of or in opposition to a Historic Preservation Commission Commissioner's remarks, are permitted. All such behavior shall be considered discourteous and disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (9) No clapping, applauding, cheering, singing, heckling, booing, or shouting from the audience or gallery, or verbal outbursts in support of or in opposition to assertions, arguments, or statements by counsel for the County or like remarks of counsel for an applicant, are permitted. All such behavior shall be considered discourteous and disorderly or contemptuous conduct in violation of the Historic Preservation Commission's Rules of Procedure.
- (10) Cellular telephone conversations shall be prohibited during Historic Preservation Commission meetings. All telephone ringers in the Historic Preservation Commission physical and digital meeting room(s) shall be set to silent mode.
- (11) All persons and entities are prohibited from committing acts of violence or threatening to commit acts of violence.
- (12) Any individual or organizational or legal person representative who attempts to disrupt a Historic Preservation Commission meeting shall be subject to legal liability and action as authorized by law.
- (13) The Historic Preservation Commission Chairperson or presiding member of the Historic Preservation Commission is authorized to request an individual who violates and thereafter refuses to cease violating and continues to violate the behavioral conduct Rules of Procedure approved herein to leave the Historic Preservation Commission physical or digital meeting room, and may request for a duly authorized law enforcement agency officer to physically remove from or physically escort out of a Historic Preservation Commission meeting room an individual who violates and thereafter refuses to cease violating and continues to violate the behavioral conduct Rules of Procedure approved herein.
- (14) Conduct or acts in violation of a behavioral conduct Rule of Procedure approved herein shall not be considered by the Historic Preservation Commission in making its final decision on the matter before it.

6. **Rules of Debate.**

- A. Every Historic Preservation Commission Commissioner shall exclusively confine his or her comments, statements, remarks, contentions, and questions to the question under debate.
- B. When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to amend, to adjourn, or to lay on the table (i.e., to continue to a date certain or to table to a date uncertain/indefinitely, such as to sometime after the occurrence of an independent event which is anticipated to occur at an unknown time in the future).

7. **Decisions.**

- A. Only one Historic Preservation Commission member may have the floor at a time. When a Historic Preservation Commission member has the floor, no other Historic Preservation Commission member may interrupt.
- B. Deliberations of the Historic Preservation Commission, and decisions on all matters by the Historic Preservation Commission, shall be made at the public meeting at which the application or proposal is heard, unless the Historic Preservation Commission considers additional time for deliberation necessary and continues the hearing to another meeting.
- C. An application may not be withdrawn by an applicant after the Historic Preservation Commission vote has been ordered by the Historic Preservation Commission Chairperson or by the presiding member of the Historic Preservation Commission.
- D. When the Historic Preservation Commission's vote on a matter is evenly divided, the motion shall be deemed to have failed.
- E. When a question has been decided by the Historic Preservation Commission, only a Historic Preservation Commission Commissioner voting on the prevailing side may move for reconsideration of the question exclusively at the same meeting.

8. **Conflicts.**

In any instance where a procedure established by these Rules of Procedure violates or is in irreconcilable conflict with federal or state law or County ordinance, the procedure(s) established hereunder shall be inoperative only to the extent of such irreconcilable conflict. If any portion hereof is held by an administrative hearing officer or court of competent jurisdiction to be invalid, such portion shall be deemed severable from the remainder and, to the extent possible, the remainder shall be operative without the invalid portion.

9. **Robert's Rules of Order.**

In all events and cases not covered by these procedures, Robert's Rules of Order shall be used as a general guide and may be followed by the Historic Preservation Commission Chairperson or the presiding member of the Historic Preservation Commission, unless the Historic Preservation Commission overrules the Chairperson or presiding member of the Historic Preservation Commission.

PASSED AND ADOPTED by the Historic Preservation Commission of Monroe County, Florida, at a duly noticed public meeting this 6th day of February, 2023.